

STATE OF NORTH CAROLINA

File No.

11 CVS 26

Orange

County

In The General Court Of Justice
☐ District ☒ Superior Court Division

Name And Address Of Plaintiff 1

Deunta Williams

Name And Address Of Plaintiff 2

Robert Quinn

VERSUS

Name Of Defendant 1

Elaine Marshall

Summons Submitted

☐ Yes ☐ No

Name Of Defendant 2

Rodney Maddox

Summons Submitted

☐ Yes ☐ No☐ Jury Demanded In Pleading☐ Complex Litigation

TYPE OF PLEADING

(check all that apply)

- ☐ Amended Answer/Reply (AMND-Response)
☐ Amended Complaint (AMND)
☐ Answer/Reply (ANSW-Response)
☐ Complaint (COMP)
☐ Confession of Judgment (CNFJ)
☐ Counterclaim vs. (CTCL)
☐ All Plaintiffs ☐ Only (List on back)
☐ Crossclaim vs. (List on back) (CRSS)
☐ Extend Statute of Limitations, Rule 9 (ESOL)
☐ Extend Time For Answer (MEOT-Response)
☐ Extend Time For Complaint (EXCO)
☐ Rule 12 Motion In Lieu Of Answer (MDLA)
☐ Third Party Complaint (List Third Party Defendants on Back) (TPCL)
☐ Other: (specify)

NOTE: Small claims are exempt from cover sheets.

Date

1/21/2011

Signature Of Attorney/Party

GENERAL

CIVIL ACTION COVER SHEET

☐ INITIAL FILING ☐ SUBSEQUENT FILING

Rule 5(b), Rules of Practice For Superior and District Courts

Name And Address Of Attorney Or Party, If Not Represented (complete for initial appearance or change of address)

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Cell Telephone No.

NC Attorney Bar No.

32892

Attorney E-Mail Address

crawls@sosnc.com

☒ Initial Appearance in Case☐ Change of Address

Name Of Firm

FAX No.

Counsel for

☐ All Plaintiffs ☒ All Defendants ☐ Only (List party(ies) represented)☐ Amount in controversy does not exceed \$15,000☐ Stipulate to arbitration

CLAIMS FOR RELIEF FOR:

(check all that apply)

- ☐ Administrative Appeal (ADMA)
☐ Appointment of Receiver (APRC)
☐ Attachment/Garnishment (ATTC)
☐ Claim and Delivery (CLMD)
☐ Collection on Account (ACCT)
☐ Condemnation (CNDM)
☐ Contract (CNTR)
☐ Discovery Scheduling Order (DSCH)
☐ Injunction (INJU)
☐ Medical Malpractice (MDML)
☐ Minor Settlement (MSTL)
☐ Money Owed (MNYO)
☐ Negligence - Motor Vehicle (MVNG)
☐ Negligence - Other (NEGO)
☐ Motor Vehicle Lien G.S. 44A (MVLN)
☐ Limited Driving Privilege - Out-of-State Convictions (PLDP)
☐ Possession of Personal Property (POPP)
☐ Product Liability (PROD)
☐ Real Property (RLPR)
☐ Specific Performance (SPPR)
☐ Other: (specify)

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STATE OF NORTH CAROLINA

-IN THE GENERAL COURT OF JUSTICE

COUNTY OF ORANGE

SUPERIOR COURT DIVISION
SPECIAL PROCEEDINGS

2011 JAN 21 P 4:33 11-CVS-000026

Deunta Williams,
Robert T. Quinn

Petitioners,

vs.

Elaine Marshall
Secretary of State,
Rodney Maddox
Chief Deputy Secretary of State,
Respondents.ORANGE COUNTY, N.C.
BY _____)
RESPONSE TO MOTION TO QUASH

NOW COME Respondents, the North Carolina Department of the Secretary of State, Elaine Marshall and Rodney Maddox, by and through undersigned counsel, Christopher B. Rawls, and respectfully submit this Response to the Petitioners' Motion to Quash filed with the Court on January 7, 2011.

Respondents respectfully show the Court:

- 1) The Uniform Athlete Agents Act is Article 9 of Chapter 78C (the North Carolina Investment Advisers Act). Under the Uniform Athlete Agents Act, the Secretary of State has the authority to issue subpoenas, register athlete agents, inspect books and records of registered athlete agents, and investigate the conduct of athlete agents to ensure compliance. Violations of the Uniform Athlete Agents Act can result in the assessment of civil and/or criminal penalties.
- 2) The North Carolina Department of the Secretary of State opened an inquiry after receiving information that the conduct of some athlete agents involving student-

athletes at the University of North Carolina at Chapel Hill (hereinafter, "UNC-C.H.") may have violated the Uniform Athlete Agents Act.

- 3) The statutory authority for the current investigation is located in N.C.G.S. §§ 78C-27 and 78C-87. N.C.G.S. § 78C-27 provides that the Secretary of State may make any investigation within or outside of this State as she deems necessary to determine whether any person has violated or is about to violate any provision of Chapter 78C. Pursuant to N.C.G.S. § 78C-87, the Secretary of State may issue subpoenas for any material that is relevant to the administration of the Uniform Athlete Agents Act.
- 4) Upon information and belief, the National Collegiate Athletic Association (hereinafter, "the NCAA") and UNC-C.H. were or are still conducting investigations to determine whether student-athletes received "impermissible benefits" as defined by the NCAA.
- 5) Pursuant to a September 22, 2010 NCAA News Release, the NCAA declared Petitioner Deunta Williams (hereinafter, "Williams") ineligible for four (4) games for receiving impermissible benefits during two (2) trips to California. The News Release further noted that the facts of the case were submitted by UNC-C.H.
- 6) On October 11, 2010, the NCAA student-athlete reinstatement staff ruled that Petitioner Robert Quinn (hereinafter, "Quinn") was permanently ineligible from collegiate athletics. The report stated that based upon information gathered by the institution (UNC-C.H.) and the NCAA Agent, Gambling and Amateurism staff during their joint investigation, Quinn had received two black diamond watches, a pair of matching earrings, and travel accommodations for a trip to Miami.

- 7) In light of the NCAA's findings that Petitioners received impermissible benefits that resulted in their loss of eligibility to participate in collegiate athletics, the Department of the Secretary of State is seeking to determine whether the individuals and/or entities that furnished the items of value violated the Uniform Athlete Agents Act.
- 8) Petitioners were punished by the NCAA for receipt of impermissible benefits as defined by the NCAA. The Department of the Secretary of State does not regulate student-athlete conduct. Instead, the Department of the Secretary of State is charged with regulating athlete agents, and it is a violation for an athlete agent to furnish anything of value to a student-athlete. Despite being the individuals that the Uniform Athlete Agents Act is enacted to protect and also essentially the victims of the conduct of athlete agents, Petitioners are, by bringing this action to quash the subpoena to UNC-C.H., trying to prevent the Department of the Secretary of State from being able to complete a thorough investigation and take action against any athlete agents that may have violated the Act by furnishing things of value to Petitioners.

THE SUBPOENA SERVED BY THE SECRETARY OF STATE COMPLIED WITH THE REQUIREMENTS OF THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT

- 9) On December 17, 2010, the Department of the Secretary of State served an investigative subpoena on UNC-C.H. seeking documents and records for the time period of January 1, 2010 through December 16, 2010 regarding individuals that were ruled permanently ineligible to play collegiate football, were temporarily suspended from NCAA competition, or were dismissed from the UNC-C.H. football team for

reasons related to the activities of agents, prospective agents, financial advisors, and/or runners.

- 10) The subpoena also requested documents and records for the time period of January 1, 2010 through December 16, 2010 regarding the investigations being conducted by UNC-C.H. and/or the NCAA into violations of NCAA Bylaw 12.3 related to the activities of agents, prospective agents, financial advisors, and runners. NCAA Bylaw 12.3 is titled "Use of Agents" and under NCAA Bylaw 12.3.1.2, "an individual shall be ineligible per Bylaw 12.3.1 if she or he accepts transportation or other benefits from any person who represents any individual in the marketing of his or her athletics ability...; or from [a]n agent..."
- 11) In accordance with the protections afforded under the Family Educational Rights and Privacy Act Regulations (FERPA), UNC-C.H. notified the student-athletes referenced in the subpoena.
- 12) Petitioners contend that FERPA does not authorize disclosure to comply with a lawfully issued subpoena. **However, pursuant to 33 C.F.R. 99.31 (a)(9)(i), "An educational agency or institution may disclose personally identifiable information from an education record without the consent required by §99.30 if the disclosure meets on or more of the following conditions: The disclosure is to comply with a judicial order or lawfully issued subpoena."**
- 13) Petitioners also contend that the provisions of 33 C.F.R. 99.31 (a)(9)(ii)(B) were not complied with. **However, 33 C.F.R. 99.31 (a)(9)(ii)(B) requires that the university make a reasonable effort to notify the eligible student of the subpoena in advance of compliance with the subpoena, so that the eligible student may seek**

protective action, unless the disclosure is in compliance with any subpoena issued for a law enforcement purpose and the issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

- 14) When the Department of the Secretary of State served the subpoena, the Department did not order UNC-C.H. not to disclose the existence or contents of the subpoena or the information to be furnished in response to the subpoena. Therefore, 33 C.F.R. 99.31 (a)(9)(ii)(B) does not apply.
- 15) Upon information and belief, and in light of the Petitioners' Motion to Quash, UNC-C.H. contacted the students as required by FERPA.
- 16) Accordingly, both the Department of the Secretary of State and UNC-C.H. complied with the requirements of 33 C.F.R. 99.31.
- 17) In addition, the Department of the Secretary of State contends that FERPA does not apply to the types of documents and records sought in the December 17, 2010 subpoena. The Department of the Secretary of State's subpoena does not request any documents and records regarding a students' health records, academic records, or other personal records generally maintained by an educational institution. Instead, the subpoena requests documents and records regarding student-athletes being offered or receiving things of value from individuals outside of the educational institution.

THE DEPARTMENT OF THE SECRETARY OF STATE HAS THE AUTHORITY TO
INVESTIGATE THE CONDUCT OF ATHLETE AGENTS AND TO ISSUE AN
INVESTIGATIVE SUBPOENA WHEN CONDUCTING AN INQUIRY INTO THE
CONDUCT OF ATHLETE AGENTS

- 18) With respect to the issue raised by Petitioners' Motion of whether the Department of the Secretary of State is authorized to initiate an investigation, the U.S. Supreme Court has held that there is no requirement of probable cause and an agency can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not. The Department of the Secretary of State does not have to have probable cause to initiate an investigation. As the Supreme Court said over forty years ago about the investigation of the Federal Trade Commission in *United States v. Morton Salt Co.*, 338 U.S. 632, 642-643 (1950):

The only power that is involved here is the power to get information from those who best can give it and who are most interested in not doing so. Because judicial power is reluctant if not unable to summon evidence until it is shown to be relevant to issues in litigation, it does not follow that an administrative agency charged with seeing that the laws are enforced may not have and exercise powers of original inquiry. It has a power of inquisition ... which is not derived from the judicial function. It is more analogous to the Grand Jury, which does not depend on a case or controversy power to get evidence but can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not. When investigative and accusatory duties are delegated by statute to an administrative body it, too, may take steps to inform itself as to whether there is probable violation of the law.

- 19) The investigative subpoena issued by the Secretary of State on December 17, 2010 is specifically permitted by statute under N.C.G.S. §§78C-27 and 78C-87. N.C.G.S. §78C-27(b) provides that for the purpose of any investigation or proceeding under the

Chapter, the Secretary or any officer designated by her may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the Administrator deems relevant or material to the inquiry. N.C.G.S. § 78C-87 also provides the Secretary of State with additional statutory authority to issue subpoenas for any material that is relevant to the administration of the Uniform Athlete Agents Act.

- 20) With respect to determining whether an investigative subpoena is reasonable under the Fourth Amendment, it has been held that to be reasonable under the Fourth Amendment, an investigative subpoena must be: (1) authorized for a legitimate governmental purpose; (2) limited in scope to reasonably relate to and further its purpose; (3) sufficiently specific so that a lack of specificity does not render compliance unreasonably burdensome; and (4) not overly broad for the purposes of the inquiry as to be oppressive, a requirement that may support a motion to quash a subpoena only if the movant has first sought reasonable conditions from the government to ameliorate the subpoena's breadth. *In re Subpoena Duces Tecum*, 228 F.3d 341, 349 (2000).
- 21) North Carolina courts have held that an Administrative agency's request for documents should be denied only where requests are either extreme, vague, oppressive, or irrelevant. *Meyers v. Holshouser*, 25 N.C. App. 683, 214 S. E.2d 630 (1975).
- 22) The December 17, 2010 subpoena is for a legitimate governmental purpose. It seeks information regarding the conduct of individuals regulated by the Secretary of State

and pursuant to N.C.G.S. §78C, was issued to determine whether those individuals may have violated the law. The subpoena was not issued to investigate if Petitioners violated N.C.G.S. § 78C-1 et seq.

- 23) The subpoena served on UNC-C.H. is narrowly tailored to allow the Department of the Secretary of State to thoroughly investigate the matters in its jurisdiction but not so overbroad that it violates the Petitioner's privacy rights. The subpoena only requests documents and records related to the activities of agents, prospective agents, financial advisors, and runners. All of these individuals: agents, prospective agents, financial advisors (if acting as investment advisers), and runners; are subject to the Investment Advisors Act and/or Uniform Athlete Agents Act. The subpoena does not seek information which is outside of the Department of the Secretary of State's jurisdiction.
- 24) As to whether the subpoena is unreasonably burdensome, it should be noted that UNC-C.H. has not objected to the breadth of the subpoena and has complied with providing information regarding other student-athletes that have not objected to the issuance of this subpoena.

**THE RECORDS OBTAINED BY THE DEPARTMENT OF THE SECRETARY
OF STATE ARE SUBJECT TO PROTECTIONS AND THE PERSONAL
INFORMATION OF PETITIONERS WILL BE PROTECTED**


- 25) Records of criminal investigations conducted by public law enforcement agencies are not public records as defined by G.S. 132-1. N.C. Gen. Stat. § 132-1.4. Under the Uniform Athlete Agents Act, an athlete agent who violates any provision under N.C.G.S. § 78C-98(a) is guilty of a Class I felony. N.C. Gen. Stat. §78C-99. Given

the criminal charges that can be brought against an athlete agent, the records obtained in this investigation are not defined as public records and may be released by order of a court of competent jurisdiction.

- 26) If the records provided are utilized to pursue an administrative penalty pursuant to N.C.G.S. § 78C-101, the records are still afforded protections under the law. The files and records of the Secretary of State relating to noncriminal investigations and enforcement proceedings undertaken are not subject to inspection and examination until the investigations and proceedings are completed and cease to be active. N.C. Gen. Stat. §78C-31(c2). Furthermore, certain information, such as financial information and social security numbers, is considered personal identifying information and not subject to disclosure pursuant to N.C.G.S. § 132-1.10.
- 27) To the extent that any information must be publicly provided, the 4th Circuit U.S. Court of Appeals has held that for purposes of determining the validity of subpoenas duces tecum issued by a United States Attorney in connection with an investigation into federal healthcare offenses, the government's interest in identifying illegal activity and in deterring future misconduct outweighed patients' privacy interests in medical records subpoenaed. *In re Subpoena Duces Tecum*, 228 F.3d 341 (2000).

WHEREFORE, the undersigned prays for the court to decline to quash the investigative subpoena issued by the Department of the Secretary of State on December 17, 2010 in connection with a lawful investigation undertaken pursuant to the Uniform Athlete Agents Act.

Respectfully submitted this the 21st day of January, 2011:



Christopher B. Rawls
NC State Bar No: 32892
Tasha W. Sheehy
NC State Bar No: 33010
Attorneys for Respondents
Department of the Secretary of State
P.O. Box 29622
Raleigh, North Carolina 27626-0622
Ph: (919) 807-2005
Fax: (919) 807-2010
Email: crawls@sosnc.com

CERTIFICATE OF SERVICE

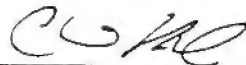
I hereby certify that a copy of the forgoing Respondents' Response to Motion to Quash was served by U.S. Mail to the following:

James D. Williams, Jr.
The Law Offices of James D. Williams, Jr. P.A.
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Durham, NC 27705

Ralph Frasier
Frasier and Griffin, PLLC
100 East Parrish Street, Suite 350
Durham, NC 27701

Leslie Strohm
The University of North Carolina at Chapel Hill
110 Bynum Hall
Campus Box 9105
222 East Cameron Avenue
Chapel Hill, NC 27599

This the 21st day of January, 2011.



Christopher B. Rawls
Enforcement Attorney
Department of the Secretary of State

STATE OF NORTH CAROLINA

File No.

11 CV 526

Orange County

In The General Court Of Justice
☐ District ☒ Superior Court Division

Name Of Plaintiff 1

Dante Williams

Tax ID/SSN

2011 JAN

-7 A 11:16

GENERAL

Name Of Plaintiff 2

Robert Quinn

Tax ID/SSN

ORANGE

COUNTY, C.S.

CIVIL ACTION COVER SHEET

☒ INITIAL FILING ☐ SUBSEQUENT FILING

Rule 5(b), Rules of Practice For Superior and District Courts

Name Of Plaintiff 3

Tax ID/SSN

Name And Address Of Attorney Or Party, If Not Represented (complete for initial appearance or change of address)

Ralph Frasier James D. Williams
110 E. Tenth St 3900 Crosslake Dr
Suite 350 Durham, NC 27701 Durham, NC 27701

VERSUS

Name Of Defendant 1

Elaine Marshall

Tax ID/SSN

Summons Submitted

☐ Yes ☒ No

Attorney Bar No.

23397

9035

☒ Initial Appearance in Case☐ Change of Address

Name Of Defendant 2

Rodney Maddy

Tax ID/SSN

Summons Submitted

☐ Yes ☒ No

Name Of Firm

Fraser & Griffin PLLC / Law Office of James D. Williams

Tax ID No.

Telephone No.

919-680-4034

FAX No.

919-382-8115

Name Of Defendant 3

Tax ID/SSN

Summons Submitted

☐ Yes ☐ No

Counsel for

☐ All Plaintiffs ☐ All Defendants ☒ Only (List party(ies) represented)☐ Jury Demanded In Pleading☐ Complex Litigation☐ Amount in controversy does not exceed \$15,000☐ Stipulate to arbitration

TYPE OF PLEADING

CLAIMS FOR RELIEF FOR:

(check all that apply)

- ☐ Amended Answer/Reply (AMND-Response)
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☐ Answer/Reply (ANSW-Response)
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☐ Negligence - Other (NEGO)
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☐ Possession of Personal Property (POPP)
☐ Product Liability (PROD)
☐ Real Property (RLPR)
☐ Specific Performance (SPPR)
☒ Other: (specify)

motion to Quash subpoena

NOTE: Small claims are exempt from cover sheets.

Date

1/2/11

Signature Of Attorney/Party

[Signature]

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STATE OF NORTH CAROLINA
COUNTY OF ORANGE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
SPECIAL PROCEEDINGS
NO: _____

DEUNTA WILLIAMS
ROBERT T. QUINN
Petitioners

v.

ELAINE MARSHALL
SECRETARY OF STATE
RODNEY MADDOX
CHIEF DEPUTY SECRETARY OF STATE
Respondents

FILED
201 JAN -7 A 11:16
ORANGE COUNTY, C.S.C.
BY 

**MOTION TO QUASH SUBPOENA TO PRODUCE RECORDS OF THE
UNIVERSITY OF NORTH CAROLINA ATHLETIC DEPARTMENT
AS IT RELATES TO RECORDS AND DOCUMENTS OF
DEUNTA WILLIAMS AND ROBERT T. QUINN, PETITIONERS**

NOW COMES, Deunta Williams and Robert Quinn, Petitioners by and through their undersigned counsel James D. Williams, Jr. and Ralph K. Fraiser, who move this Honorable Court for an Order quashing subpoenas issued by the Secretary of State for the University of North Carolina Athletic Department Records as they relate to information contained in the Department Records and investigatory notes relative to Deunta Williams and Robert Quinn, Petitioners.

In support of this Motion, counsel would respectfully inform the Court of the following:

I. FACTUAL BACKGROUND

1. On December 16, 2010, the Secretary of State of North Carolina by Rodney S.

Maddox, issued and served Leslie Chambers Strohm, Vice Chancellor and General

Counsel a subpoena, (Attachment A) to produce information relative to Deunta Williams and Robert Quinn, Petitioners.

2. That Deunta Williams and Robert Quinn, Petitioners were sent a letter from the University General Counsel informing them of the subpoena and the request for information relating to their involvement in an investigation conducted by the University Athletic Department.
3. That the subpoena in pertinent parts requests a number of personal and confidential communications from the Petitioners to the NCAA and the University.
4. That at all times the University and the NCAA assured the Petitioners that any information he provided would be strictly confidential and would not be disseminated to a person or agency.
5. That the information being sought is both personal and confidential as it relates to their email account, financial account and telephone records, receipts and other data.
6. No consent has been granted to anyone at the University by the Petitioners or their parents, to release any of this information to any agency requesting this information pursuant to any subpoena.

II. BASES FOR MOTION

Petitioners move to quash the subpoena as it relates to information requested concerning these Petitioners.

- A. **This Subpoena does not comply with the provision of 33 C.F.R.99.31 (Hereinafter referred to as "FERPA")** Title 20, United States Code, Section 1232g(b) and (d), portions of F.E.R.P.A., and the Federal Regulations promulgated pursuant to FERPA, found at 33 C.F.R. 99.31 (a) (9) (I) does not authorize disclosure

“to comply with a judicial order or lawfully issued subpoena”. However, 33 C.F.R. 99.31 (a) (9) (ii) (B) provides:

“Any other subpoena issued for a law enforcement purpose and the court or other issuing agency has ordered that the existence of the contents of the subpoena or the information furnished in response not be disclosed”.

Nothing in this subpoena indicates that the provisions of this section have been complied with, nor has any provision been made for either safeguarding the information or controlling its dissemination if disclosed.

Further, for the reasons stated in the factual section above, this subpoena is clearly in the nature of a fishing expedition for information about the Petitioners and others when there is no bases for the retrieval of this information.

As there is no criminal or civil case filed against any one and no clear nexus between the information requested and any law enforcement exception this subpoena is improvidently issued as it relates to information requested about these Petitioners.

Additionally, and in a slightly different context, the North Carolina Court of Appeals has held that F.E.R.P.A. makes students education records, “privileged and confidential” for the purposes of North Carolina’s “Open Meetings” law. DTH PUBLISHING COMPANY v. University of North Carolina, and the UNC-CH Undergraduated Court, 128 N.C. App. 534, 496, S.E. 2nd 8 (1998).

The subpoena should be quashed for non-compliance with the provision of 34 C.F.R..99. 31, and for the additional reasons stated below:

B. The subpoena is improvidently issued, and violates the Movant’s privacy rights;

the subpoena violates North Carolina and federal common law relating to

privacy, protection against disclosure of private information, and common law prohibiting against “fishing expeditions” as they relate to the use of subpoenas duces tecum.

There has been absolutely no showing necessity, probable cause or need on the face of the subpoena, and no restrictions placed upon the dissemination of the information other than that the place to deliver it to is the Secretary of State. There has been no application to a Court of competent jurisdiction or any other legal entity. No protections, whatsoever, have been placed, and the lack of any factual basis for the requested information makes the subpoena unconstitutionally over broad and vague, and therefore improper and subject to being quashed.

Further, the Secretary of State office is apparently on a “fishing expedition” as it relates to this Petitioner. This subpoena is not a trial subpoena, but is being used in an effort to further the Secretary of State investigation. The intended purpose of a subpoena duces tecum is to require the production of a specific document or item patently material to the inquiry or as a notice to produce the original of a document. *Vaughan v. Broadfoot*, 267 N.C.691,149 S.E. 2d 37 (1966) consequently, the subpoena duces tecum “must specify with as much precision as is fair and feasible, the particular documents desired”. *“A party is not entitled to have a mass of records and other documents brought into court in order to search them for evidence”*. *Id.* *State v. Love*, 395 S.E. 2d 429, 100 N. C. App. 226 (N.C. App. 1990), at 395 S.E.2d 431. *State v. Newell*, 348 S.E. 2d 158, 82 N.C. App. 707 (1986).

Further, the Secretary of State’s attempted use of subpoena duces tecum is inappropriate for the apparently intended purpose. It is rudimentary under our law that the required method for attempting to procure the information sought is to procure an Order of the Court, but there is not

any court action. Even then it would be supported by an affidavit and application in support thereof. Specifically, the Secretary must demonstrate that the disclosure of the protected and privileged material serves the ends of justice. Whatever proposed law enforcement interests are assessed by the Secretary must then be weighed against significant privacy interests involved here. The Secretary's subpoena, if honored by the University, would subvert this necessary inquiry.

Further, as the majority of information mentioned in the subpoena is private information of the Petitioners being held in the possession of the University, Petitioners contend that the subpoena be quashed, additionally on the basis that the Secretary has not complied with the requirements of Pennsylvania v. Ritchie, 480 U.S. 39, 107 S.Ct. 989, 94 L. Ed. 2d 40 (1987), regarding protection of Movant's privacy rights. In addition to the North Carolina case law cited above regarding the prohibition against fishing expeditions in the use of subpoenas duces tecum, the Secretary has not sought any court approval and supervision over the requested records by making application to the Court, and independent judicial review of the reason the Secretary is seeking private information of the Petitioners. There is no: (1) showing of materiality; (2) no showing that the information sought cannot be gained by other, non-invasive procedures, (3) no showing or application explaining why, in the absence of objective evidence of materiality and relevance to this investigation documents should be produced.

Further, the mere potential for criminal proceeding being brought against this Petitioners and not being afforded any of their constitutional rights and privileges should be grounds alone to quash this subpoena.

III. RELIEF REQUESTED

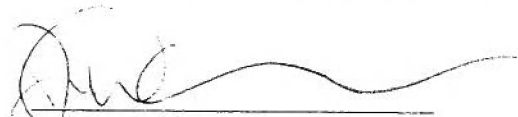
This subpoena as it relates to these Petitioners should be quashed in its entirety. A hearing

is requested on this motion for such relief as the Court deems fit and proper.

Respectfully submitted,

This the 17th day of January, 2011.

THE LAW OFFICES OF JAMES D. WILLIAMS, JR., P.A.



James D. Williams, Jr.
Attorney for Petitioner Williams
N.C. State Bar No.: 9035
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(919) 382-7413 *facsimile*

^{S:}
FRAISER AND GRIFFIN, PLLC



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Durham, NC 27701
(919) 680-4039
(919) 680-4390 *facsimile*

CERTIFICATE OF SERVICE

The undersigned certifies that he has mailed a copy of the foregoing Motion to Quash, to the following:

Secretary of State
P. O. Box 29622
Raleigh, North Carolina

Leslie Chambers Strohm
The University of North Carolina Chapel Hill
University Counsel
110 Bynum Hall
Chapel Hill, North Carolina 27599

This the 17th day of January, 2011.

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